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BOOK REVIEWS

The problem of crime goes no further toward supporting the theory of economic determinism than do the facts of history and ethnography. Studies in this field have shown that crime in society has three distinct roots:

(1) Biological. The causes of it are more or less independent of economic conditions.

(2) In the early acquired habits of the individual, these, too, are largely independent of the economic organization of society.

(3) In faulty social conditions which may be chiefly economic. These conditions depress the normal individual into the abnormal classes. Crime can be got rid of only by controlling physical heredity and moral training, as well as social organization. The large biological and psychological elements in such a social phenomenon as crime show very plainly that the purely economic element plays a much less important part in determining the social life than Marx supposed.

This paper by Professor Ellwood presents a thoroughly good psychological analysis of Marx's theory and its shortcomings.

Northwestern University.

ROBERT H. GAULT.

DER VERGELTUNGSGEDANKE UND SEINE PRAKTISCHE BEDEUTUNG VON
DR. AUGUST KOEHLER, A. O. PROFESSOR IN MUNCHEN. Leipzig:
Verlag von Wilhelm Engelmann, 1909. Pp. 288.

In this forcibly written and most readable volume Koehler does valiant battle for the retribution theory as the best possible basis upon which criminal justice may be administered. He begins by a discerning exposition of the theories actually underlying or suggested for reform of criminal law. The clearest expression of the differences can be obtained by putting the matter in this wise: Which shall determine the kind and extent of punitive measures, the gravity of the offense estimated by the value of the property involved and the extent of the damage done in the assault or, leaving aside consideration of the gravity of the offense, the measure of the possible danger of a repetition of the crime? In the latter alternative of course the measuring staff is applied to the criminal rather than to the crime. The author goes on in his first section from the above to the discussion of the intimate meaning of terms, such as "Gesinnungsstrafe" and "Vergeltungsstrafe," and throws into antithetical relationships the various theoretical propositions—a logical procedure which might well have been followed by some other German writers on criminal law reform had they desired to carefully enlighten readers as to their own meanings.

The writer urges that all good things may be achieved under the auspices of this idea of retribution, which is, after all, the only safeguard. To be sure, any mathematically exact compensation for the offense is, of course, impossible, but the idea in general of retribution administered by society contains the conception, and as much as possible, of a practical measure of settlement for the crime.

The antithesis of the retribution theory is set forth as the idea of administration of the law solely for the protection of society. Over and beyond this the question of retribution and its opposite involves also the problem of determinism—the extent to which free will is involved in

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the delinquent act. The author devotes a goodly number of pages to the old philosophical discussion—determinism versus free will. In his last section, on the practical outcome of the application of the retribution theory, a great many points are concisely considered. It is set forth that practical affairs, at least for the most part, are better adjusted under the guidance of this concept. This would come out particularly in the question of the individualization of punishment according to the kind and form of the offense as opposed to the individualization according to the potential or actual dangerousness of the intent. If one were to judge solely by intent it would frequently come within official ken that an attempted crime had back of it just as evil a forethought as a completed crime.

Altogether too short a space is devoted to the postulates of the author's concept in regard to the treatment of juvenile delinquents. The main point to be considered before application of the indeterministic and retributive theory is whether or not the young person shows the "symptoms" of having freedom of the will. Upon this diagnosis will hinge the treatment; if positive, then the retribution theory should obtain. In this matter the author avoids technical questions and details, and perhaps for his contention it is well that he does so.

So firmly is Koehler grounded in his beliefs that he warns against compromises. Every tendency to get into the way of adjusting criminal affairs by the appeal to intent signifies for him distinct damage to the interests of the constitutional government as it exists according to the culture-ideal of today.

The reviewer's criticism will be foreseen by anyone who knows anything of how his own opinion has come to be formed on this whole subject. Objection is general and fundamental rather than detailed. One might easily pick flaws in the various corners of Koehler's structure, but the underlying trouble seems to the reviewer to be a curious assumption that all is known regarding the causation of criminality. Just why we should be so cock-sure and keen to decide between dogmas on this subject when we are so ignorant with regard to most other affairs in which humanity is deeply concerned seems not at all clear. One who is engaged in the practical situation feels keenly the need for less dogma and for vastly more thorough-going study of causations and of the efficacies of measures already undertaken; such a one realizes strongly that the greatest need for the formulation of anything like ultimately valuable principles of criminal law is light—more light.

Chicago.

WILLIAM HEALY.

VERBRECHENSOPPHLAXE UND STRAFRECHT VON DR. JOHANNES NAGLER, PROFESSOR IN BASEL. Leipzig: Wilhelm Engelmann, 1911. Pp. 265.

One naturally expects a scholarly work from the pen of one of the chief editors of the "*Kritische Beiträge zur Strafrechtsreform*," and in this we are far from being disappointed. Professor Nagler has given us a polemic on the theoretical considerations underlying criminal law which it would be presumptuous to attempt to criticise or even thoroughly review in anything short of an extended essay. The reviewer must be